

1 Muriel B. Kaplan, Esq. (SBN 124607)
2 Michele R. Stafford, Esq. (SBN 172509)
3 SALTZMAN & JOHNSON LAW CORPORATION
4 120 Howard Street, Suite 520
5 San Francisco, CA 94105
Telephone (415) 882-7900
Facsimile (415) 882-9287
mkaplan@sjlawcorp.com
mstafford@sjlawcorp.com

6 Attorneys for Plaintiffs

7 Robert D. Swanson, Esq. (SBN 162816)
8 BOUTIN GIBSON DI GUISTO HODELL, INC.
9 555 Capitol Mall, Suite 1500
10 Sacramento, CA 95814
Telephone (916) 321-4444
Facsimile (916) 441-7597

11 | Attorneys for Defendants

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 GIL CROSTHWAITE, RUSS BURNS, in their
respective capacities as Trustees of the
16 OPERATING ENGINEERS HEALTH AND
WELFARE TRUST FUND FOR NORTHERN
17 CALIFORNIA, et al.

Case No.: C 07-05192 WHA

JOINT CASE MANAGEMENT CONFERENCE STATEMENT

18 v. Plaintiffs,

19 DALECON, INC., a California Corporation and
20 RONALD HENRY STICKNEY, an individual,

DATE: January 24, 2008
TIME: 11:00 a.m.
JUDGE: The Honorable William Alsup

21 Defendants.

23 The parties to the above-entitled action jointly submit this Case Management Statement:

27

28

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT
CASE NO.: C07-5192 WHA**

1 2. **Facts:** Defendant, Dalecon, Inc. is a signatory to a Collective Bargaining
 2 Agreement requiring that certain contributions be made for each hour worked by its employees.
 3 Plaintiffs contend that defendants had become delinquent in contributions owed to the Trust Fund
 4 plaintiffs. Additionally, an audit was performed to confirm proper reporting and / or payment to
 5 the Trust Funds for the period from 2003 – 2005, which, plaintiffs contend, revealed additional
 6 amounts due. Plaintiffs also contend that defendant Ronald Stickney is a guarantor of plaintiffs'
 7 claims, and that liquidated damages, interest, attorney fees and costs (including audit costs) are
 8 also owed to plaintiffs pursuant to the terms of the Agreement. Defendants dispute these
 9 contentions.

10 3. **Legal Issues:** It does not appear at this point that there are disputed points of law,
 11 except to the extent that the issue of whether Ronald Stickney is a guarantor of plaintiffs' claims
 12 involves legal (in addition to factual) issues.

13 4. **Motions:** Plaintiffs will file a Motion for Summary Judgment in the event that this
 14 matter does not resolve informally or by mediation. Defendants may file a motion to transfer
 15 venue and a motion for summary judgment as to the claim against Ronald Stickney personally.

16 5. **Amendment of Pleadings:** No amendments are anticipated.

17 6. **Evidence Preservation:** Not applicable.

18 7. **Disclosures:** The parties have made their initial Rule 26 disclosures. Additionally,
 19 plaintiffs already provided a copy of the audit report and the total amount due. The majority of the
 20 other documents that support plaintiffs' claims are already in defendant's possession---the
 21 Collective Bargaining Agreement, and the Contribution Reports submitted by defendant. The
 22 parties' disclosures are attached hereto.

23 8. **Discovery:** No formal discovery has occurred to date. The parties do not propose
 24 any limitations or modifications of the discovery rules.

25
 26
 27
 28

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT
 CASE NO.: C07-5192 WHA**

1 9. **Class Actions:** This is not a class action.

2 10. **Related Cases:** There are no related cases.

3 11. **Relief:** As of today's date, a total of \$259,969.90 is claimed due by plaintiffs, plus
4 all attorney's fees and costs (including auditor's costs) incurred to date and continuing to accrue.

5 12. **Settlement and ADR:** The parties are both agreeable to mediation. The parties
6 have agreed to mediation pursuant to ADR L.R. 6. Plaintiffs have requested that defendants
7 provide information regarding their opposition to the amounts claimed due (none has been
8 provided to date), as well as documentation in support of their claims in the event that the amount
9 claimed due is contested. Nothing has been provided to date, nor a response to plaintiffs' claim.
10 Defendant Dalecon notes that it is still reviewing and analyzing plaintiffs' voluminous audit and
11 intends to provide a substantive response including disputed amounts.

12 13. **Consent to Magistrate:** The parties do not consent.

13 14. **Other References:** Not applicable

14 15. **Narrowing of Issues:** To date, in plaintiffs' view, there are no known disputes as
15 to the amount owed, a large portion of the amounts due are based on reports submitted by
16 defendant. Plaintiffs assert that the additional amounts due were found via audit and are owed
17 pursuant to the terms of the Trust Agreements and Collective Bargaining Agreement as well as the
18 mandates of ERISA. As set forth above, defendant Dalecon is reviewing plaintiffs' audit.
19 Defendant anticipates that upon completion of this review issues may be able to be narrowed to
20 disputes as to amounts claimed due for specific discrete time-periods and classifications.

21 16. **Expedited Schedule:** The parties are not of the view that this case can be handled
22 on an expedited basis.

23 17. **Scheduling:** The parties propose the following schedule:

24 ///
25
26
27
28

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT
CASE NO.: C07-5192 WHA**

1 Designation of experts: June 6, 2008
 2 Designation of rebuttal experts: July 7, 2008
 3 Completion of discovery: August 8, 2008
 4 Dispositive motions: September 12, 2008
 5 Final Pretrial Conference: November 7, 2008
 6 Trial: January 19, 2009

8 18. **Trial:** This is expected to be a 3 – 5 day bench trial.

9 19. **Disclosure of non-party entities or persons:** Plaintiffs do not know of any other
 10 parties that may have an interest in this litigation. Defendants do not know of any other parties
 11 who have an interest in this litigation

12 20. **Other:** There are no other matters that may affect disposition of this action.

13 14 Respectfully submitted,

15 Dated: January 16, 2008 SALTZMAN & JOHNSON LAW CORPORATION

16 _____/s/ _____
 17 Michele R. Stafford
 18 Attorneys for Plaintiffs

19 Dated: January 16, 2008 BOUTIN GIBSON DI GUISTO HODELL, INC

21 _____/s/ _____
 22 Robert Swanson
 23 Attorneys for Defendants

24

25

26

27

28

**JOINT CASE MANAGEMENT CONFERENCE STATEMENT
CASE NO.: C07-5192 WHA**